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Chrysler Center
666 Third Avenue
New York, New York 10017
212 935 3000
212 983 3115 fax
www.mintz.com

Francis J. Earley

Direct dial 212 692 6230
FEarley@mintz.com

July 28, 2005

VIA ELECTRONIC FILING
David Stein, Esq.
The Coleman Law Firm
881 Allwood Road
Clifton, N.J. 07012

Re: S & L Vitamins, Inc. v. Australian Gold, Inc.
05 CV 01217 (JS)(MLO)

Dear David:

Enclosed is a copy of Australian Gold, Inc.'s Amended Answer, Affirmative and Other Defenses, Amended Counterclaims and Amended Third-Party Complaint in the above-referenced matter. As we discussed at the conference before Magistrate Orenstein on Monday, July 25, 2005, a motion to dismiss does not constitute a responsive pleading under Rule 15(a); therefore, Australian Gold is entitled to amend its counterclaims and third-party complaint as of right. *Taylor v. Abate*, 1995 WL 362488, *1 (E.D.N.Y. 1995). Further, upon the filing of the Australian Gold's amended counterclaims and third-party complaint, S&L Vitamins' motion to dismiss is moot. *Id.* at *2. Accordingly, we are filing the enclosed amended pleading in lieu of an opposition to S&L Vitamins' motion to dismiss.

Please contact us to discuss a new briefing schedule if you intend to move to dismiss Australian Gold's amended counterclaims and amended third-party complaint after you have had an opportunity to review Australian Gold's amended pleading. Further, if you have any other questions, please do not hesitate to contact me.

Very truly yours,

Francis Earley

Francis J. Earley

cc: Honorable Joanna Seybert
Honorable Michael Orenstein
Scott Matthews, Esq.

Enclosure

NYC 333727v1

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